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REMARKS

Claims 1-42 are pending after entry of this paper. Claims 27-34 have been rejected. Claims 1-26 and 35-42 have been withdrawn. Applicants reserve the right to pursue withdrawn claims in a divisional or continuation application.

Claims 27 and 28 have been amended. No new matter has been introduced by these amendments. Reconsideration and withdrawal of the pending rejections in view of the below remarks are respectfully requested.

Response to Rejections under 35 U.S.C. §102

Claims 27-34 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,133,090 to Modak et al. ("Modak"). The Examiner contends that Modak discloses an antimicrobial elastomeric as claimed. Specifically, the Examiner contends that Modak discloses an antimicrobial agent, an elastomeric article, a chlorhexidine salt, a quaternary ammonium halide, a glove, and a benzalkonium chloride. The Examiner further contends that the processes of extending the antimicrobial activity of the elastomeric article recited in claims 27, 30, 31, and 33 "are not essential to a determination of patentability" because a product-by-process claim is based on the product itself. Applicants' respectfully disagree with the Examiner's contention.

Though claim 27 is a product-by-process claim, nevertheless claim 27 recites that the product is produced by a process comprising, among other things, "packaging the elastomeric article in a means for reducing the relative humidity in the vicinity of the elastomeric article to less than the ambient relative humidity." The product as recited in instant claim 27 is thus a "packaged" product, and thus comprises a packaging. To this end, and solely for the purpose of furthering prosecution, applicants have amended the preambles of claims 27 and 28 to specifically recite "packaged antimicrobial elastomeric article." Nevertheless, Modak does not disclose a package. Thus, Modak does not disclose each and

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every element of instant claim 27, and the rejections of the claims under 35 U.S.C. §102(b) are improper. For the reasons that independent claim 27 is not anticipated by Modak, applicants respectfully submit that dependent claims 28-34, which depend therefrom, are also not anticipated. Thus, applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §102(b).

Response to Rejections under 35 U.S.C. §103

Claims 27-34 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Modak in view of U.S. Patent Application Publication No. 2002/0152538 ("McDevitt"). The Examiner contends that Modak does not disclose a process of extending antimicrobial activity. The Examiner specifically contends that McDevitt teaches a glove comprised of an antimicrobial agent, a packaging, and a moisture-resistant barrier container, and that the packaging is for the purpose of preserving any additives or to maintain the product in a sterile environment. The Examiner thus suggests that it would have been obvious to combine the teachings of Modak with the teachings of McDevitt to arrive at the claimed invention. Applicants respectfully disagree.

Modak, as stated above, does not disclose a package. McDevitt is directed to a finger glove, that can comprise elastomeric material, that can have various additives applied thereto (abstract, 0027, and 0030). The additives contemplated by McDevitt are many and varied in both composition and properties:

[0027] For example, cationic materials, such as chitosan (poly-N-acetylglucosamine), chitosan salts, cationic starches, etc., can be applied to a glove of the present invention to help attract negatively charged bacteria and deleterious acidic byproducts that accumulate in plaque. Moreover, various other additives can also be applied. Examples of other suitable additives include, but are not limited to, dental agents, such as fluorides, peppermint oil, mint oil and alcohol mixtures; flavoring agents, such as xylitol; anti-microbial agents; polishing agents; hemostatic agents; surfactants; anti-ulcer components; and the like.

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Not only are antimicrobial agents merely one of a laundry list of potential additives, but additives which “attract negatively charged bacteria” (i.e., a teaching away, emphasis added) are also contemplated.

Regarding the potential packaging of the disclosed finger glove, McDevitt states:

[0189] Prior to being shipped and sold, the finger glove of the present invention can be placed in various sealed packaging in order to preserve any additives applied to the finger glove or otherwise to maintain the finger glove in a sterile environment. Various packaging materials that can be used include ethylene vinyl alcohol (EVA) films, film foil laminates, metalized films, multi-layered plastic films, and the like. The packaging can be completely impermeable or can be differentially permeable to the flavorants depending on the application.

Instant claim 27 recites that the claimed packaged antimicrobial elastomeric article is prepared by a process comprising, among other things, “packaging the elastomeric article in a means for reducing the relative humidity in the vicinity of the elastomeric article to less than the ambient relative humidity” (emphasis added). Applicants respectfully submit that McDevitt neither teaches nor suggests a packaging that is a means for reducing the relative humidity to less than ambient relative humidity. Thus, it would not have been obvious to use such a packaging for the purpose of retaining antimicrobial activity of an antimicrobial elastomeric article over time.

As the disclosure of McDevitt is directed to a generic additives on a finger glove, McDevitt necessarily does not appreciate the nuances specifically associated with an antimicrobial coating on an elastomeric article. Notably, none of the 35 working examples disclosed by McDevitt teach a packaging for a finger glove with an antimicrobial coating. Indeed, none of the 35 working examples disclosed by McDevitt teach a finger glove with an antimicrobial coating at all. The present inventors appreciated that it is possible to maintain the antimicrobial activity of an elastomeric article with an antimicrobial coating by means of a particular packaging that specifically reduces the relative humidity in the vicinity of the elastomeric article to less than the ambient relative humidity. Furthermore, the instant specification demonstrates that the inventors appreciated this unique packaging elastomeric articles with

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an antimicrobial coating (see page 13 of the instant specification). McDevitt merely suggests that packaging in general may be used to preserve additives in general. McDevitt does not teach, does not suggest, and does not motivate one of ordinary skill in the art to look for how to accomplish the preservation. Specifically, McDevitt does not teach, suggest, or motivate one of ordinary skill in the art to seek a means of reducing relative humidity as recited in instant claim 27.

Furthermore, applicants respectfully submit that the embodiments of packaging contemplated by McDevitt represent a teaching away from the invention as recited in instant claim 27. Specifically, McDevitt teaches that a packaging can be either “completely impermeable” or that it can be “differentially permeable to the flavorants depending on the application.” A packaging that is not completely permeable is unable to maintain the relative humidity in the vicinity of the elastomeric article less than ambient relative humidity. On the other hand, a packaging that is completely impermeable necessarily maintains the relative humidity in the vicinity of the elastomeric article at exactly ambient humidity.¹ Thus, both embodiments of packaging taught by McDevitt teach away from the invention as claimed in instant claim 27, that is, an article packaged in “a means for reducing the relative humidity in the vicinity of the elastomeric article to less than the ambient relative humidity.”

Applicants further respectfully submit that dependent claim 33, which depends from claim 27, and recites that the means for reducing the relative humidity is “a moisture-resistant barrier container or metal foil pouch with a dessicant,” is patentable in its own right. McDevitt neither discloses nor suggests any means of reducing the relative humidity in the vicinity of the elastomeric article to less than ambient relative humidity, and specifically neither discloses nor suggests the use of a dessicant to perform this function.

¹ McDevitt neither discloses nor suggests that the process of packaging the article inside an impermeable packaging material be performed in an environment that is maintained at a relative humidity less than ambient relative humidity. Furthermore, McDevitt neither discloses nor suggests any means of reducing the relative humidity inside an impermeable packaging material to less than ambient relative humidity (for example by including dessicants within the packaging).

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For the foregoing reasons, applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §103(a).

Dependent Claims

The applicants have not independently addressed all of the rejections of the dependent claims. The applicants submit that for at least similar reasons as to why independent claims 27 from which all of the dependent claims 28-34 depend are believed allowable as discussed *supra*, the dependent claims are also allowable. The applicants however, reserve the right to address any individual rejections of the dependent claims and present independent bases for allowance for the dependent claims should such be necessary or appropriate.

Thus, applicants respectfully submit that the invention as recited in the claims as presented herein is allowable over the art of record, and respectfully request that the respective rejections be withdrawn.

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CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application. Favorable action by the Examiner is earnestly solicited.

Respectfully submitted,

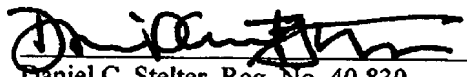
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Danny PENNY, Applicant

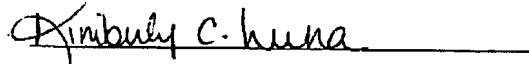
By their attorney,

Date: 20 Sept 2007


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CERTIFICATE OF TRANSMISSION UNDER 37. C.F.R. 1.8

The undersigned certifies that a true and accurate copy of this "Response to Non-Final Office Action" is being transmitted to the Honorable Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450, by facsimile transmission to the above-stated facsimile number, on this the 20th day of September, 2007.



Kimberly C. Luna